

**FRANCHISE AGREEMENT  
BETWEEN  
EPCOR WATER ARIZONA INC.,  
CHAPARRAL CITY WATER COMPANY  
AND  
THE CITY OF SCOTTSDALE, ARIZONA**

1. Grant of Franchise. There is hereby granted to EPCOR Water Arizona Inc. and Chaparral City Water Company, each a corporation organized and existing under and by virtue of the laws of Arizona, and their respective successors and assigns (collectively, "Grantees" and, individually, a "Grantee"), the right and privilege to construct, maintain, and operate within the present and future public rights-of-way (including-but not limited to-streets, alleyways, highways, and bridges) in the applicable Grantee's Franchised Area (as defined below) in the City of Scottsdale, Arizona ("City"), a potable water delivery system, together with certain appurtenances (including-but not limited to-transmission mains, distribution mains, service lines, fire hydrants, meters, and equipment for its own use) for the purpose of supplying potable water to City, its successors, the inhabitants thereof, and all individuals and entities within or beyond the limits thereof, for all purposes for which it is duly authorized by its Certificate of Convenience and Necessity ("Franchise"). For purposes of this Franchise, the "Franchised Area" with respect to a Grantee shall consist of those portions of the area within the then effective borders of City that are also within the boundaries of any then effective Certificate of Convenience and Necessity as granted by the Arizona Corporation Commission or its successor to that Grantee. All such transmission mains, distribution mains, and service lines shall be located underground unless otherwise approved by City. A Grantee shall not construct wells, well sites, storage, or pumping facilities in the public rights-of-way. Nothing herein shall be construed to permit a Grantee to maintain any portion of its potable water delivery system or appurtenances thereto in any manner which would affect or interfere in any way, as determined by City in its sole discretion, with City's use of the public rights-of-way for its intended use; provided, however, that the foregoing shall not preclude reasonable temporary interference necessitated by the applicable Grantee's repair or maintenance of those facilities. City acknowledges and agrees that all of Grantees' infrastructure located within the Franchised Area as of the date of this Franchise complies with the foregoing or is otherwise acceptable in its current location to City.
2. Grantee's Compliance with Requirements; Plans Submitted for Approval; City Construction near Grantee's Facilities.
  - A. The quality of water treatment, transmission, and distribution services provided by each Grantee shall comply with the requirements of the United States Environmental Protection Agency, Arizona Department of Environmental

Quality, Arizona Corporation Commission, Arizona Department of Health Services, and the Maricopa County Environmental Services Department.

- B. All construction under this Franchise shall be performed in accordance with established practices for City with respect to such public rights-of-way. Before a Grantee makes any installations in the public rights-of-way, that Grantee shall submit for approval any applicable permit applications and a map showing the location of such proposed installations to City. Only when time does not permit prior application for a permit and repairs to a Grantee's facilities are reasonably required, that Grantee first may institute and complete the repairs and then complete and file the applicable permit application. In this case, telephone notification of the repair will be given as soon as practicable to the contact person designated by City. Within ninety (90) days after the approval of this Franchise by the Mayor and Council of City, each Grantee shall submit to City's City Manager a map showing the true and correct location of all present installations of that Grantee within City's rights-of-way.
- C. If City undertakes, either directly or through a contractor, any construction project adjacent to or near a Grantee's facilities operated pursuant to this Franchise and for the relocation of which City is required hereunder to pay, City shall include in all such construction specifications, bids, and contracts a requirement that as part of the cost of the project, the contractor or contractor's designee obtain from that Grantee the temporary or permanent removal, relocation and barricading of equipment, and depressurization of that Grantee's facilities or equipment, all as necessary to avoid the creation of an unsafe condition in view of the equipment to be utilized or the methods of construction to be followed by the contractor.

3. Construction and Relocation of Grantee's Facilities; Payments.

- A. All facilities installed or constructed pursuant to this Franchise shall be so located or relocated and so erected as to minimize the interference with traffic or other authorized use over, under, or through the public right-of-way. Those phases of construction of a Grantee's facilities relating to traffic control, backfilling, compaction, and paving as well as location or relocation of facilities herein provided for shall be subject to regulation by the City. Each Grantee shall keep accurate records of the location of all facilities in the public right-of-way and furnish them to City upon request. Upon completion of new or relocation construction of underground facilities in the public right-of-way, each Grantee shall provide City with corrected drawings showing the actual location of the underground facilities in those cases where the actual location differs significantly from the proposed location approved in the permit plans.
- B. If City requires a Grantee to relocate that Grantee's facilities that are located in private easements, the entire cost of relocating that Grantee's facilities (including the

cost of purchasing a new private easement or right-of-way, if necessary) shall be borne by City. City shall not be obligated to bear such costs under this paragraph 3B if, prior to City's acquisition of such right-of-way, either: (i) that Grantee subordinated its easement or right-of-way in such a manner that the person from whom City acquired the right-of-way would not have been obligated to bear any costs of such relocation, or (ii) that Grantee did not in fact obtain such easement or right-of-way.

- C. The City reserves its prior superior rights to use the public right-of-way and City property, including the surface areas, for all public purposes. When the City uses its prior superior right to the public rights-of-way, or other City property, the Grantee shall move its property that is located in the public right-of-way or on other City property at its own cost, to such location as the City directs.
- D. City will bear the entire cost of relocating any of a Grantee's facilities, the relocation of which is necessitated by the construction of improvements by, or on behalf of, City in furtherance of a proprietary function.
- E. If City participates in the cost of relocating a Grantee's facilities for any reason, the cost of relocation to City shall not include any additional cost resulting from any upgrade or improvement of that Grantee's facilities as they existed prior to relocation. Notwithstanding the foregoing, if a Grantee requests, in connection with any such relocation by City, any upgrade or improvement of the affected Grantee's facilities, City will in good faith consider such request, subject in each case to that Grantee's agreement to reimburse City for the actual, additional costs incurred by City for the requested upgrade or improvement. City will deliver to the applicable Grantee documentation reasonably satisfactory to that Grantee to evidence the actual, additional cost of such upgrades and improvements.
- F. All underground abandoned lines shall continue to remain the property of the Grantee, unless the Grantee specifically acknowledges otherwise to the City Engineer and such is accepted by the City. Grantee shall remove, at Grantee's sole cost, abandoned lines at the request of City when required to facilitate construction of any municipal project or as City determines is reasonably necessary to protect public health and safety. Grantee may contract with City contractor for such removal. Prior to removal of any abandoned lines, Grantee shall notify City of its intent to remove abandoned lines and offer possession of said lines to City. Grantee shall identify the location of any known abandoned lines as they exist at the time this Franchise is granted through recognized industry means. Grantee shall further identify the location of any lines that become abandoned during the term of this Franchise in a like manner.
- G. Grantee shall pay the City for permit fees/costs and for pavement (cut surcharge) damages fees for the location (or relocation) of Grantee's facilities. Payment for

permit fees/costs (i.e. plan review, inspection, etc.) and pavement (cut surcharge) damage fees is separate and in addition to the Franchise Fees imposed in this Agreement.

H. Subject to the provisions of the foregoing paragraphs 3B, 3C, and 3D regarding the cost of relocation of a Grantee's facilities, that Grantee's right to retain its facilities in their original location is subject to the paramount right of City to use its public rights-of-way for all permitted purposes, which shall include, but shall in no way be limited to, the following functions of City:

- i. Any and all improvement to City streets, alleys, and avenues;
- ii. Establishing and maintaining sanitary sewers, storm drains, drainage structures, and related facilities;
- iii. Establishing and maintaining parks, parkways, pedestrian malls, or grass, shrubs, trees, and other vegetation for the purpose of landscaping any street or public property;
- iv. Providing fire protection;
- v. Collection and disposal of garbage;
- vi. Any structures for public purposes deemed appropriate by the Mayor and Council of City;
- vii. Any structure for any purpose, whether governmental or proprietary, which City is authorized to construct and/or maintain.

4. Indemnification/Insurance:

- A. Each Grantee shall indemnify and hold harmless City and any of its departments, agencies, officers, employees, elected officials, and representatives from all damages, claims, or liabilities and expenses (including attorney's fees) to the extent arising out of, or resulting in any way from, that Grantee's performance or failure to perform the services for City required of that Grantee hereunder or in connection therewith and caused by negligent or intentional acts, errors, mistakes or omissions of that Grantee, its officers, employees, or others for whose acts that Grantee may be legally liable.
- B. Each Grantee shall secure and maintain at all times during the term of this Franchise, insurance coverage, in the amounts stated below, which shall include statutory workers' compensation, comprehensive general, and automobile liability, all including contractual liability assumed by the insured. The comprehensive general and automobile limits shall be no less than five million dollars (\$5,000,000) per occurrence (combined single limit), including bodily injury and property damage, and in an amount not less than five million dollars (\$5,000,000) annual aggregate for each personal injury liability and products-completed operations. City shall be named as an Additional Insured with respect to all operations of the insured and the applicable Grantee's insurance policy shall contain a waiver of subrogation against City, its departments, agencies, boards, commissions, officers, officials, agents, and

employees for losses arising from the service provided by or on behalf of that Grantee in the event that Grantee is found to be negligent. Insurance coverage must be provided by an insurance company admitted to do business in Arizona and rated A-VII or better by AM Best's Insurance Rating. Subsequently, a certificate of insurance, signed by an authorized representative of the insurer with 30 days' notice of cancellation or non-renewal, shall be presented a minimum of five (5) days after the date of expiration of the policy term. In the event a Grantee fails to provide such certificate of coverage, City may – but shall not be required to – purchase insurance if available, to protect itself against any losses. If City elects to purchase the insurance under the provision, City shall provide the applicable Grantee with at least five business days' prior written notice and that Grantee shall be liable to City for all costs incurred by City for purchasing such insurance.

- C. Each Grantee shall submit to City—Attention: Maria Muiser, 7447 E. Indian School Rd., Ste. 205, Scottsdale, Arizona, 85251—a certificate of insurance, evidencing the coverage and limits stated in the foregoing paragraph within ten (10) days of award of this Franchise. Insurance evidenced by the certificate shall not expire, be cancelled, nor non-renewed without thirty (30) days' prior written notice to City. A statement to that effect must appear on the face of the certificate, and certificate shall be signed by a person authorized to bind the insurer.
- D. Policy Limit Escalation and Purchase of New Insurance Coverage. City may elect, as of each five (5) year anniversary of this Franchise and by 180 days prior written notice to Grantee, to increase the amount of any existing insurance coverage to account for inflation, changes in risk, or any other factor that City reasonably determines to affect the prudent amount of insurance to be provided. Such increases to any category of existing coverage shall not exceed fifty percent (50%) of the then applicable limits at any five (5) year anniversary of this Franchise.

During the term of this Franchise, it may become commercially reasonable for Grantee to proactively increase its coverage levels or purchase new insurance coverage. The five (5) year anniversary is not a limitation on Grantee's rights to determine the level and types of insurance it deems proper to purchase at any time. During the term of this Franchise, City may request Grantee to add new insurance coverage that it views as commercially reasonable. When so requested by City to add new coverage, Grantee shall promptly request its insurance carrier or broker to opine in writing as to the reasonableness of City's request and availability of the requested new insurance coverage. If such carrier or broker opines that City's request is reasonable and the requested new insurance coverage is available, the parties shall mutually determine a timeline for such purchase to occur.

- E. City of Scottsdale, its agents, representatives, officers, directors, officials and employees must be named an Additional Insured under the following policies:
  - i. Commercial General Liability

- ii. Auto Liability
- iii. Excess Liability-Follow Form to underlying insurance as required.

5. Restoration of Rights-of-Way. Subject to the provisions of the foregoing paragraphs 3B, 3C and 3D regarding the cost of relocation of a Grantee's facilities, (i) whenever a Grantee shall cause any work, opening, or alteration whatsoever to be made for any purpose in any City public right-of-way, the work shall be completed with due diligence within a reasonably prompt time; and that Grantee shall, upon completion of such work, restore the disturbed property to as good condition as it was in prior to such openings or alteration, and (ii) that Grantee shall provide any barricades, signing, rerouting of traffic, or other actions which City shall consider necessary or desirable in the interest of public safety during any such opening or alteration within the public right-of-way.

6. Franchise Fee.

A. Each Grantee agrees to pay City in consideration of the grant of this Franchise a sum equal to two percent (2%) of the gross receipts of that Grantee from the sale by it of potable drinking water within the Franchised Area, as shown by that Grantee's billing records (the "Franchise Fee"). The Franchise Fee shall be due and payable quarterly. For the purpose of verifying the amounts payable hereunder, the books and records of each Grantee shall be subject to inspection by duly authorized officers or representatives of City at reasonable times, and in the event that such inspection evidences that the Franchise Fee actually paid for any quarter is more than ten percent (10%) below the amount that should have been paid for such quarter, the applicable Grantee shall reimburse City for the costs of such inspection.

B. The amount payable under the Franchise Fee shall not be reduced by reason of the payment of any general ad valorem taxes, assessments for special improvements such as general sales or transaction privilege Franchise taxes, or any similar general tax or levy.

7. Term.

A. The Effective Date of this Franchise shall be January 1, 2014 . This Franchise shall continue and exist for a period of twenty-five (25) years from the Effective Date.

B. The rights, privileges, and franchises hereby granted shall continue and exist for a period of twenty-five (25) years following the Effective Date; provided, however, that any party may reopen any or all sections for further review and possible amendment of this Franchise, on its fifth (5<sup>th</sup>) or twelfth (12<sup>th</sup>) anniversary, by giving written notice of its intention to do so not less than one (1) year before the fifth (5<sup>th</sup>) or twelfth (12<sup>th</sup>) anniversary. Any such amendment will be subject to any applicable requirements for approval by the qualified electors of City.

- C. Unless terminated earlier by written agreement of the parties, this Franchise will expire on the twenty-fifth (25<sup>th</sup>) anniversary of the Effective Date. Each Grantee shall comply with all federal, state, and local laws and ordinances, including those that may come into being, in its exercise of Franchise rights.

8. Default; Dispute Resolution

- A. Failure or unreasonable delay by any party to perform any term or provision of this Franchise for a period of ten (10) days after written notice thereof from another party shall constitute a default under this Franchise. If the default is of a nature which is not capable of being cured within ten (10) days, the cure shall be commenced within such period, and diligently pursued to completion. The notice shall specify the nature of the alleged default and the manner in which the default may be satisfactorily cured. In the event of a default hereunder by any party, each non-defaulting party shall be entitled to all remedies at both law and in equity, including, without limitation, specific performance. For purposes of this paragraph 8A, a default by one Grantee shall not constitute a default by all Grantees.
- B. To further the cooperation of the parties in implementing this Franchise, City and each Grantee shall individually designate and appoint a representative to act as a liason between City and its various departments and the applicable Grantee. The initial representative for City (the "City Representative") shall be the Asset Management Coordinator and the initial representative for each Grantee shall be the Vice President-Operations (the "Grantee Representative"). The represenataives shall be available at all reasonable times to discuss and review the performance of the Parties and the development of property.
9. Non-Exclusive. This Franchise is not exclusive, and nothing herein contained shall be construed to prevent City from granting other like or similar grants or privileges to any other person, firm, or corporation.
10. Transfer of Franchise. The right, privilege, and franchise hereby granted may be transferred in whole or in part by a Grantee, its successors and assigns, to any public service corporation approved by the Arizona Corporation Commission to provide public utility water service within that Grantee's Franchise Area and upon payment of an appropriate transfer fee to City, as calculated solely by City, to reimburse City for any reasonable costs it incurs in processing the transfer. No other assignment of any rights, privileges or franchise hereby granted may be made without the prior consent of both the City Council and the Arizona Corporation Commission and payment of an appropriate transfer fee to City to reimburse City for any reasonable costs it incurs in processing the transfer. The City Council's consent shall not be unreasonably withheld, conditioned or delayed. No consent shall be required in connection with an assignment made as security





2355 W. Pinnacle Peak Road #300  
Phoenix, AZ 85027  
Attn: Vice President Operations

To Grantee Chaparral City Water Company:

Chaparral City Water Company  
2355 W. Pinnacle Peak Road #300  
Phoenix, AZ 85027  
Attn: Vice President Operations

15. Arizona State Law to Govern. The provisions of this Franchise shall be governed and construed in accordance with the laws of the State of Arizona.
16. Voter Approval. This Franchise Agreement is subject to the approval of the qualified electors of City and does not become effective unless so approved.
17. Election Costs. Pursuant to City's Charter, the estimated expense of publication and election as determined by the City Council (\$90,000.00) has been deposited with the City Clerk.
18. Severability. If any section, paragraph, clause, phrase or provision of the franchise, other than Section 6, shall be adjudged invalid or unconstitutional, the same shall not affect the validity of the Franchise as a whole or any part of the provisions hereof other than the part so adjudged to be invalid or unconstitutional. If Section 6 shall be adjudged invalid or unconstitutional in whole or in part by a final judgment, the Franchise shall immediately terminate and shall be of no further force or effect.

IN WITNESS WHEREOF, the parties hereto have executed this Franchise as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

EPCOR WATER ARIZONA INC.,  
an Arizona corporation

THE CITY OF SCOTTSDALE,  
an Arizona municipal corporation

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

W. J. "Jim" Lane, Mayor

CHAPARRAL CITY WATER COMPANY,  
an Arizona Corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

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Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

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Bruce Washburn, City Attorney